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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/809,273

03/16/2001

Hiroyuki Nishii

Q63124

4971

65565 7590 10/26/2007  
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EXAMINER

GARRETT, DAWN L

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/809,273

**Applicant(s)**

NISHII ET AL.

**Examiner**

Dawn Garrett

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4,10,12,13,15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4,10,12,13,15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. This Office action is responsive to the amendment filed August 9, 2007. Claims 1-3, 5-9, 11, 14, 16 and 18 have been canceled. Claims 15 and 17 were amended.

Claims 4, 10, 12, 13, 15 and 17 are pending.

2. The objection to claims 15 and 17 for setting forth an unrecognized unit of measurement is withdrawn due to the amendment.

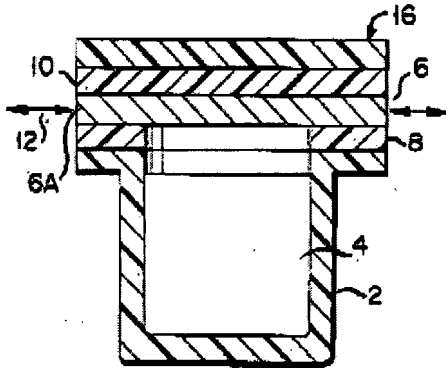
### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

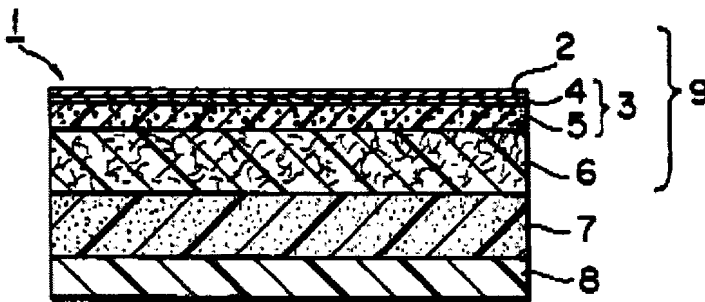
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 4 and 13 are again rejected under 35 U.S.C. 102(b) as being anticipated by Wakamatsu et al. (US 4,667,814). Wakamatsu et al. discloses an oxygen absorbent packet comprising a plastic sheet (2) ("non-porous sheet"), adhesive (8) to seal (2) and (6), an air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the "reinforcing layer" of "porous sheet"), an air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the "porous layer" of the "porous sheet") and an aluminum foil covering (14) (alternatively also a "non-porous sheet"). Oxygen absorbent (4) is held in the container (per instant claim 13). See Figures 1 and 2.



5. Claims 4 and 13 are again rejected under 35 U.S.C. 102(b) as being anticipated by Yamada et al. (US 5,143,763). Yamada et al. discloses containers comprising an oxygen scavenger laminate (see abstract). Figure 1 shows an oxygen absorber (7), a non-woven fabric layer (6) ("reinforcing layer"), a porous membrane (3) ("porous layer"), a non-porous layer (2) and a laminate layer (8) having gas barrier properties ("non-porous layer"). See col. 16, lines 28-35.



### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 15 is again rejected under 35 U.S.C. 103(a) as being unpatentable over Wakamatsu et al. (US 4,667,814). Wakamatsu et al. is relied upon as set forth above for the rejection of claim 4. Wakamatsu et al. fails to teach expressly the combined average pore size of the air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the "reinforcing layer" of "porous sheet") and the air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the "porous layer" of the "porous sheet") to form the "porous sheet". Wakamatsu et al. does teach if a microporous film is used the pore size should range from 0.01 to 50 micrometers (see col. 2, lines 67-68) and that small pores are desirable (see col. 3, lines 39-43). It would have been obvious to one of ordinary skill in the art to have formed the sheet (6) and sheet (10) having pore sizes within the range of claim 15, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

8. Claim 15 is again rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al. (US 5,143,763). Yamada et al. is relied upon as set forth above for the rejection of claim 4. Yamada et al. fails to teach expressly the combined average pore

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size of the "reinforcing layer" (6) and the "porous layer" (3, 4 or 5) for the "porous sheet". Yamada et al. does teach the dense skin layer has a pore size of up to 0.5 micrometers (see col. 7, lines 14-15) and that porosity affects the oxygen permeation rate (see col. 7, lines 36-62). It would have been obvious to one of ordinary skill in the art to have formed the sheets (3) and (6) having pore sizes within the range of claim 15, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

9. Claims 10, 12, and 17 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Wakamatsu et al. (US 4,667,814) in view of Biebuyck et al. (US 5,734,225). Wakamatsu et al. discloses an oxygen absorbent packet comprising a plastic sheet (2) ("non-porous sheet"), adhesive (8) to seal (2) and (6), an air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the "reinforcing layer" of "porous sheet"), an air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the "porous layer" of the "porous sheet") and an aluminum foil covering (14) (alternatively also a "non-porous sheet"). Oxygen absorbent (4) is held in the container (per instant claim 13. See Figures 1 and 2. Wakamatsu et al. describe the packaging as being useful for

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sealing items to protect from oxygen, but fails to teach the packaging could be used to protect an organic electroluminescent device. Biebuyck et al. discuss the importance of protecting an organic electroluminescent device from oxidation by encapsulating the device (see col. 1, lines 7-37 and col. 2, lines 43-44) and further describes it is desirable to have a protective film directly adjacent the EL device (see col. 2, lines 53-61). It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the oxygen scavenger packet taught by Wakamatsu et al. as part of a container for an organic electroluminescent device, because Wakamatsu et al. teach the film contains an antioxidant for protection against oxidation and Biebuyck et al. teach organic electroluminescent devices need packaging in order to protect the devices from oxidation and subsequent limited lifetime of the device due to oxidation.

Wakamatsu et al. fails to teach expressly the combined average pore size of the air-permeable non-woven sheet (6) (see col. 2, lines 43-45; the "reinforcing layer" of "porous sheet") and the air-impermeable layer that may have pores (10)(see col. 3, lines 39-44; the "porous layer" of the "porous sheet") to form the "porous sheet". Wakamatsu et al. does teach if a microporous film is used the pore size should range from 0.01 to 50 micrometers (see col. 2, lines 67-68) and that small pores are desirable (see col. 3, lines 39-43). It would have been obvious to one of ordinary skill in the art to have formed the sheet (6) and sheet (10) having pore sizes within the range of claim 17, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental

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modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

10. Claims 10, 12, and 17 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al. in view of Biebuyck et al. (US 5,734,225). Yamada et al. discloses containers comprising an oxygen scavenger laminate (see abstract). Figure 1 shows an oxygen absorber (7), a non-woven fabric layer (6) ("reinforcing layer"), a porous membrane (3) ("porous layer"), a non-porous layer (2) and a laminate layer (8) having gas barrier properties ("non-porous layer"). See col. 16, lines 28-35. Yamada et al. describe the packaging as being useful for sealing items to protect from oxygen, but fails to teach the packaging could be used to protect an organic electroluminescent device. Biebuyck et al. discuss the importance of protecting an organic electroluminescent device from oxidation by encapsulating the device (see col. 1, lines 7-37 and col. 2, lines 43-44) and further describes it is desirable to have a protective film directly adjacent the EL device (see col. 2, lines 53-61). It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the oxygen scavenger packet taught by Yamada et al. as part of a container for an organic electroluminescent device, because Yamada et al. teach the film contains an antioxidant for protection against oxidation and Biebuyck et al. teach organic



electroluminescent devices need packaging in order to protect the devices from oxidation and subsequent limited lifetime of the device due to oxidation.

Yamada et al. fails to teach expressly the combined average pore size of the “reinforcing layer” (6) and the “porous layer” (3, 4 or 5) for the “porous sheet”. Yamada et al. does teach the dense skin layer has a pore size of up to 0.5 micrometers (see col. 7, lines 14-15) and that porosity affects the oxygen permeation rate (see col. 7, lines 36-62). It would have been obvious to one of ordinary skill in the art to have formed the sheets (3) and (6) having pore sizes within the range of claim 17, because one would expect such a pore size to allow the desired amount of water and/or gases to pass through. Optimization of the pore size would result in allowing the desired amount of water and/or gases to pass through. Furthermore, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants’ claims patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness may be rebutted where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

### ***Response to Arguments***

11. Applicant's arguments filed August 9, 2007 have been fully considered but they are not persuasive.

With regard to the rejections over Wakamatsu, applicant argues Wakamatsu discloses a cup-like shape and the claims are drawn to sheets. In response the examiner submits that a specific shape for the claimed sheets has not been specified in

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the claims (i.e. a flat shape). The examiner maintains Wakamatsu discloses all of the required elements of the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to the rejections over Yamada, applicant argues Yamada does not disclose a "container". In response the examiner submits that a specific shape for the claimed sheets joined together has not been specified in the claims (i.e. a specific opening or arrangement of the sheets). The examiner maintains Yamada discloses all of the required elements of the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### **Conclusion**

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is (571) 272-1523. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dawn Garrett/

Dawn Garrett  
Primary Examiner  
Art Unit 1794